

Preliminary Recommendations for Public Comment Period

Minority Owned and Local Small Business Task Force

These preliminary recommendations represent the views to date of the Minority Owned and Local Small Business Task Force. The recommendations are subject to change based on feedback received from this survey and further review of the Task Force while we finish preparing our final report. The final report will be transmitted to the Montgomery County Council on September 15, 2015. The final report will be available at www.montgomerycountymd.gov/COUNCIL/Workgroups/procurement/molsb.html.

Thank you for taking the time to review and share your thoughts on our preliminary recommendations. Your feedback is important to us.

-Minority Owned and Local Small Business Task Force

I. Recommendations to Improve the Minority, Female, and Disabled-Owned Businesses (MFD) Program

- 1. Establish a 35% goal for MFD subcontracting.** The goal must be for all competitive contracting dollars. Based on the findings presented in the Disparity Study, the Task Force believes that aggressive action is needed to remedy the underutilization of minority firms. The Task Force does not believe that the current goals set annually by the Office of Procurement are sufficient to remedy past discrimination. The Task Force recognizes that legal requirements may result in revisions to this recommendation.
- 2. Continue to set annual goals for minority group participation.** With the release of the 2014 Disparity Study, the Office of Procurement set goals in FY15 for the minority groups in the four service categories (goods, professional services, non-professional services, and construction) that were underutilized in the previous fiscal year.
- 3. Bring accountability to the MFD subcontractor participation requirement.** The prime contractor must be held accountable and required to meet subcontractor goals. In order to ensure all adequate efforts to comply with the MFD requirements, the Task Force recommends the following:
 - a. Require MFD subcontracting plan submission sooner in the procurement process.** Currently, subcontractor plan submission is part of the negotiation process, which takes place prior to the Office of Procurement executing the final contract and encumbering funds/issuing the notice to proceed. The submission of a Subcontractor Performance Plan should be submitted with the bid documentation, in order to understand the intent of the contractor to comply with subcontracting goals. This initial plan may be amended during the negotiation process.
 - b. Require prime contractors to submit written documentation on outreach efforts.** The current Subcontractor Performance Plan form requires that contractors “provide a statement that summarizes maximum good faith efforts achieved, and/or the intent to increase minority participation throughout the life of the contract or the basis for a full waiver request”. The Task Force recommends that this section of the plan be updated to require that each bidder submit

documentation evidencing their outreach efforts to utilize minority firms as subcontractors.

- c. **Enforce stringent criteria for waivers and improve transparency for approvals or denials.** Stringent rules for MFD subcontracting waivers must be enacted. Waivers granted, if any, must be thoroughly reviewed and approved by a second party, Procurement Regulations currently only require review by the Office of Procurement's Director.

In Sec. 7.3.3.5 (a) of the Procurement Regulations, waivers are allowed in cases where it is "unusually difficult or impossible for the contractor to meet a subcontracting requirement". This section of the regulations should be strengthened with specific guidance on those conditions. The four waiver reasons permitted by Procurement include: 1) Good-Faith Efforts Impaired; 2) MFD Unavailable/Not Identifiable; 3) MFD Involvement Not Possible; and 4) Partial Waiver. These reasons should be reevaluated to ensure that they cannot be easily circumvented in favor of prime contractors. Good-Faith Efforts, which often include pricing differences, should be evaluated earlier in the solicitation process to ensure that efforts are not impaired. Also, the County should require "Best Efforts" instead of "Good Faith" efforts and this should be defined in the Procurement Regulations.

Finally, there should be more openness, transparency and information available on why a waiver was approved. The County should look into adapting a similar practice held in other jurisdictions, such as the District of Columbia, to proactively make available information on waivers requested and granted, and post this information online.

- 4. **Strengthen MFD program compliance and monitoring.** Compliance requires prime contractors to meet the stated participation goals, or if not feasible, attest to the good faith/best efforts made by the prime contractors that are confirmed independently, as well as making sure that the subcontractor agreement requirements at the time of the contract are locked in. In the Disparity Study, Griffin and Strong found that goals were being applied during the procurement process, but had no "teeth" or little follow-up when it came to contract administration.

Monitoring assures that the subcontractors are actually performing the percentage of work that is set aside or required in the agreement and assures that if a prime contractor receives a change order, the subcontractor's percentage reflects the inclusion of the change order. Griffin and Strong found that there was little monitoring of contracts once they were awarded. The Task Force recommends that monitoring and compliance requirements be strengthened with enforceable requirements. Prime contractors should be required to report on a monthly or at least quarterly basis.

In order for improvements to reporting and monitoring to occur, the MFD program must be staffed adequately to bring accountability to the program. Increased staffing will help the program meet its stated goals and improve functionality through adequate monitoring and compliance. The current staffing (one FTE) for the program is insufficient for the program to be effective and compliant. The MFD program needs more staff dedicated to the program. The Task Force recommends Procurement look at what improvements could be made with the addition of one, two or three FTEs.

5. **Institute a prompt payment clause for subcontractors.** The Task Force agrees with this recommendation suggested by User Departments in the Disparity Study. This would add financial protections for subcontractors. The County should require prime contractors to report prompt payments on a monthly or quarterly basis to the contract administrators.
6. **Increase number of firms obtaining certification and streamline the County's MFD certification process.** Some certifications are very costly to MFD companies and may be prohibitive to obtain. The current six certifications accepted by the County should be reviewed to determine if the process can be streamlined, while maintaining the integrity of the program. It benefits the County to encourage MFD certification, so the County can better assess whether it is meeting its goals. Given the growth of minority owned businesses, the County should be seeing annual growth in the number of MFD certified firms.
7. **Create a MFD program Standard Operating Procedure manual.** Griffin and Strong recommends, and the Task Force supports, the production of a Standard Operating Procedure manual that incorporates MFD participation goals and efforts that demonstrate the desire for new MFD engagement with the County. This manual, which is referenced in the Procurement Regulations, is critical if Department staff is to properly understand and administer the MFD program. The Standard Operating Procedure manual should be a public document. This will illustrate the County's commitment to rectify negative perceptions about the County's utilization of MFD firms.
8. **Require minimum number of bids from minority firms.** The Task Force recommends that the County create a policy requiring a minimum number of bids from African American, Hispanic American, and other minority firms for the next five years to improve underutilization.

II. Recommendations to Improve the Local Small Business Reserve Program (LSBRP)

As outlined in the Procurement Regulations §11B.65.01.02 (m), to qualify as a local small business, the program currently requires that the business either has its physical location(s) only in the County; or has physical business locations both in and outside of the County with the County-based location(s) accounting for over 50% of the business's total number of employees, or over 50% of the business's gross sales ("principle place of business").

9. **Require headquarters be based in Montgomery County.** The Task Force recommends that the businesses have their headquarters based in Montgomery County in order to be eligible for the program. Additionally, 50% of income taxes must be paid to Montgomery County.
10. **Fifty percent set-aside for MFD small businesses.** In the LSBRP program, currently 20% of eligible contracting dollars¹ are set aside for purchases from local small businesses. Establish 50% set-aside under LSBRP specifically for Minority, Female and Disabled owned prime contractors. Special attention would be focused at addressing the disparities of African American Firms. Set aside numbers must be adjusted for each minority group based on the Disparity Study for each category of service.

¹ Procurement Regulations §11B.65.01.04 (b)

III. Recommendations to Improve Outreach

- 11. Expand County outreach programs.** The Task Force recommends that the County undertake a campaign that emphasizes that Montgomery County is open to doing business with a diverse business community. Seminars that support small and MFD firms is also always a great way to make firms feel welcomed to do business. Seminars on bonding, credit, and certification may prove to be popular topics. The County must consider holding events that will bring vendors, prime contractors and users together, such as those held by the State and City of Baltimore.
- 12. Invite potential MFD prime and subcontractors to attend pre-bid conferences for high value contracts.** These events will allow prime contractors to engage with potential subcontractors, which will lead to increased utilization of small and MFD businesses.
- 13. Increase formal interaction between the County and Chambers of Commerce to improve outreach and correct negative perceptions.** With such a robust and ample number of County Chamber's of Commerce, training and certification should be offered by the County, so that Chamber staff can be certified/authorized as providers of information. In addition, the County, and if appropriate the new economic development entity, should provide professional development training grants for the local Chambers to participate in such training and certification. In order for this recommendation to be effective, incentives and resources need to be established in a systematic approach requiring Chambers and other non-profit business groups attend County events and trainings for continued funding.

To promote this effort, the County should consider holding an annual or bi-annual Small Business Resource Industry Day, whereby, having ALL Chambers exhibiting and allowing contractors to meet with these groups to establish relationships and contacts.

IV. Recommendations to Improve Accountability

- 14. Establish and appoint oversight commission.** Recommend a dedicated commission in the Office of Procurement to oversee the Minority Owned and Local Small Business Task Force recommendations through implementation, and the ongoing programs. The Commission should provide an annual report to the County Executive and County Council.
- 15. Retroactively apply adopted recommendations.** All adopted policy changes should be retroactive for existing contracts upon renewal and not just apply to new or expiring contracts.
- 16. Tie diversity goals to performance.** Performance reviews and evaluations would be tied to diversity/inclusion goals being met or exceeded for program managers/contract administrators and Department Directors.
- 17. Create Office of Procurement Accountability within the Office of the Chief Administrative Officer.** The Office would be responsible for increasing awareness among using departments of minority underutilization and availability goals.

- 18. Simplify RFP boilerplate forms.** The Office of Procurement's boilerplate template is around 40 pages long and can increase depending on the type of procurement and attachments needed. Procurement should revise the template to simplify the document, and be based on the type of solicitation.

V. Recommendations to Increasing Capacity of Local Small and Minority Firms

- 19. Establish a mentorship program.** This would create a prime contractor pipeline so companies can grow from subcontractors to prime contractors. This could be done by piloting Mentor-Protégé and Joint Venture contracts. Many MFD's provide goods and services, such as construction and professional services, but don't have the proper infrastructure to handle larger contracts or experience lead as the prime contractor. Allowing these MFD firms to team with other firms provide additional avenues for MFD firms to share in a wider array of opportunities. The contracts could be offered exclusively to businesses who have entered in a mentor-protégé or joint venture relationship. Alternatively, the program could be incentivized as a preference program.
- 20. Establish private sector initiatives.** Griffin and Strong recommends, and the Task Force supports that the County consider private sector initiatives, such as including MFD goals in their economic development contracts and measuring MFD participation on private sector projects performed by prime contractors who currently do business with the County. Montgomery County could task the newly created Economic Development Corporation with collecting information on private sector vendor diversity. Also, the Task Force recommends that the Interagency Procurement Coordinating Council discuss and report to the Council on how the agencies can collaborate to improve participation by MFD firms.
- 21. Improve financing options.** As approved in Bill 25-15, the new Economic Development Corporation's program must include activities "supporting minority, female, and disabled owned businesses, including assisting minority, female, and disabled owned businesses to gain access to capital". The Task Force has identified a number of County, State, and Federal programs geared towards providing MFD firms with capital. However, the Task Force recommends better promotion of these programs and ask the new Economic Development Corporation to identify gaps in financing options.